



DEPARTMENT OF THE NAVY
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION
PATUXENT RIVER, MARYLAND 20670-5304

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NAVAIRWARCENACDIVINST 12630.2
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JAN 21 1994

NAVAIRWARCENACDIV INSTRUCTION 12630.2

From: Commander, Naval Air Warfare Center Aircraft Division

Subj: FAMILY AND MEDICAL LEAVE

Ref: (a) Title 29 Code of Federal Regulations 825

Encl: (1) Office of Personnel Management Interim Regulations
(2) Basic Entitlements Under Title 29
(3) Examples of Completed Time Cards

1. Purpose. To issue operating procedures necessary to carry out delegated authorities outlined in enclosure (1).

2. Background. Public Law 103-3 (The Family and Medical Leave Act) went into effect on 5 August 1993. Enclosure (1) contains interim Office of Personnel Management regulations implementing the law for covered Federal employees. The basic instruction references enclosure (1) by section number (e.g., 630.1207).

3. Scope. This instruction applies to all Federal employees at activities serviced by the Human Resources Office (HRO), with the following exceptions.

- a. Employees serving under an intermittent appointment.
- b. Employees serving in a temporary position with a time limitation of 1 year or less.
- c. Part-time employees who don't have an established regular tour of duty during the administrative workweek.
- d. Non-U.S. citizen Department of the Navy employees.

Employees excluded under paragraph 3 are covered by reference (a). Enclosure (2) summarizes the basic entitlements under reference (a).

4. Responsibilities

a. Employees. Employees wishing to take leave under the provisions of the Family and Medical Leave Act are responsible for the following:

(1) When requesting leave, employees must submit to their immediate supervisor a signed and dated Standard Form 71 (SF-71) (Application for Leave). Whether taking annual leave, sick leave,

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or leave without pay, if the leave is for family or medical purposes authorized by enclosure (1), employees must specify in block 5 of the SF-71 that the leave is being used for this purpose. The employee must specify the period of leave requested. If the employee wishes to use a combination of sick, annual, and/or leave without pay, a separate SF-71 shall be submitted for each type of leave requested.

(2) Employees must provide their immediate supervisor with a written notice of any personal representative the employee has designated on his or her behalf under 630.1206(c).

(3) Employees are responsible for reporting on their status, their intention of returning to work, and providing medical certification, as required by this instruction and enclosure (1).

b. First Level Supervisors. First level supervisors are responsible for the following:

(1) Determining if employees can take leave on an intermittent or reduced basis under 630.1204(c).

(2) Acting promptly on leave requests submitted by employees under their supervision.

(3) Requesting employees to reschedule medical treatment, if necessary, in accordance with 630.1206(b).

(4) Ensuring that employees provide required medical documentation and forwarding the documentation to the Occupational Health Clinic or Dispensary for filing in the employee's medical records file.

(5) Challenging medical certification and requiring additional medical certification in accordance with 630.1207.

(6) In conjunction with a representative of the HRO, establishing the essential functions of positions as required by 630.1207.

(7) Determining the need for and the timing of medical certification in accordance with 630.1207.

c. Department/Division Heads. Department and Division Heads and other mid-level managers are responsible for the following:

(1) Determining whether available alternative positions will be used for employees using leave on a reduced or intermittent schedule in accordance with 630.1204(c).

(2) Determining whether the available alternative positions meet the criteria set forth by 630.1204(c).

(3) Determining whether or not an employee returning from leave can be returned to an equivalent position as discussed in 630.1208.

d. Payroll. The Payroll Section is responsible for maintaining a proper accounting of the time used for family and medical leave as required by 630.1211.

5. Definitions. The word "agency," as it appears throughout enclosure (1), means the employing activity (e.g., NAVAIRWARCENACDIV, Naval Aviation Depot Operations Center, Naval Electronic Systems Engineering Activity, etc.).

6. Grievances. Employees who believe that management has failed to comply with enclosure (1) may file a grievance under the appropriate negotiated grievance procedure (bargaining unit employees) or the administrative grievance procedure (non-bargaining unit employees).

7. Procedures. The following procedures will be used in the implementation of enclosure (1).

a. Leave Codes. When using leave under the Family and Medical Leave Act, the employee's hours must be reported to Payroll using a Format 1 time card. The family and medical leave codes below will be reported with the applicable leave code (Hour Code KA, LA, LB, LG, and/or LS). The family and medical leave codes will be input in the ENVIRONMENTAL/HAZARD/OTHER CODE field. These codes are:

- (1) DA - birth of son/daughter or care of newborn;
- (2) DB - adoption or foster care;
- (3) DC - care for spouse, son, daughter, or parent with a serious health condition;
- (4) DD - serious health condition of employee.

Enclosure (3) contains examples of properly completed time cards.

b. Medical or Other Certification

(1) When an employee requests leave for the purposes outlined in 630.1203(a)(3) or (4), he or she shall provide supporting medical documentation to the supervisor in a timely fashion. Whenever possible, the employee shall present medical certification supporting the need for leave in advance. When advance provision is impracticable, the employee shall present the certification immediately upon their return to duty, at a minimum. The contents of the medical certification must meet the requirements of 630.1207(b).

(2) When an employee requests leave for purposes of birth of a newborn or care for a newborn, the medical statement or birth certificate will serve as adequate documentation. This certification is to be presented to the supervisor as soon as is practicable, but in no event later than the employee's return to duty.

(3) When an employee requests leave for purposes of adoption or foster care, the employee shall present a signed statement from the adoption or other agency overseeing the placement of the child for adoption or foster care. Generally, the employee will be able to present this paperwork in advance. Where this is impracticable, the employee shall provide the certification to the supervisor as soon as practicable, but in no event later than the employee's return to duty.

(4) If the employee fails to provide the required certification, management may charge the employee's absence as unauthorized.

c. Return to Duty. Management must ensure that employees in certain positions, returning to work following treatment of a serious health condition, are able to perform the essential functions of their position. Upon their return to work, such employees must provide their supervisor with medical certification that they are able to perform the essential functions of their position. Notification and reimbursement criteria are addressed in 630.1208(i). Employees are required to provide this documentation only if they occupy a position such as the following:

(1) Having specific medical standards or physical requirements.

(2) Covered by a medical evaluation program.

The HRO can advise if positions fall into one of the above categories.

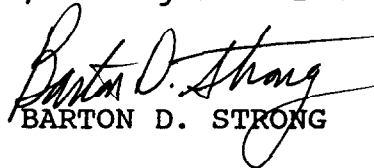
d. Monthly Notification. Employees, or, when necessary, their representatives, shall contact their supervisors at the beginning of each calendar month when in a family or medical leave status and advise of his or her intent with respect to returning to work. Depending upon the circumstances of the case, the supervisor may waive this requirement.

8. Effect of Labor Agreements. Where this instruction conflicts with the content of a current labor agreement, the labor agreement will control. When the labor agreement expires, the instruction will then control.

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9. Twelve-Month Period. The beginning date for the 12-month period during which an employee takes leave under this instruction is controlled by 630.1203(c) and (d).

10. Review. The Director, HRO shall review this instruction annually on its anniversary date, making revisions as necessary.


BARTON D. STRONG

Distribution:

List I

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OFFICE OF PERSONNEL MANAGEMENT INTERIM REGULATIONS

630.1201 Purpose, applicability, and administration.

(a) Purpose. This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Code. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in 630.1203(a) of this part.

(b) Applicability.

(1) Except as otherwise provided in this paragraph, this subpart applies to any employee who--

(i) Is defined as an "employee" under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as--

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b)(2) of this section;

(B) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code;

(C) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to--

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

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(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, 5 February 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code--

(i) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

(ii) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and

(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section shall, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) Administration. The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

630.1202 Definitions.

In this subpart:

(a) Accrued leave has the meaning given that term in 630.201(b)(1) of this part.

(b) Accumulated leave has the meaning given that term in 630.201(b)(2) of this part.

(c) Administrative workweek has the meaning given that term in 610.102(a) of this chapter.

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(d) Adoption refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child--e.g., whether from a licensed placement agency or otherwise--is not a factor in determining eligibility for leave under this subpart.

(e) Continuing treatment by a health care provider means one or more of the following situations where an employee or an employee's spouse, son, daughter, or parent--

(1) Is treated two or more times for an illness or injury by a health care provider;

(2) Is treated two or more times for an illness or injury by a health care provider under the orders of, or on referrals by, the individual's health care provider or is treated for the illness or injury on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider--e.g., a course of medication or therapy--to resolve the health condition; or

(3) Is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured--e.g., Alzheimer's disease, severe stroke, or terminal stages of a disease.

(f) Employee means an individual to whom this subpart applies.

(g) Essential functions means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2.

(h) Family and medical leave means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

(i) Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child.

(j) Health care provider means--

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) A person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a state to provide the service in question; or

(3) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

(k) In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(l) Intermittent leave or leave taken intermittently means leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of less than 1 hour to several weeks.

(m) Leave without pay means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

(n) Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parent "in law."

(o) Reduced leave schedule means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced is counted as leave for the purpose of this subpart.

(p) Regularly scheduled has the meaning given that term in 610.102(g) of this chapter.

(q) Regularly scheduled administrative workweek has the meaning given that term in 610.102(b) of this chapter.

(r) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves--

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, or more than 3 calendar days, that also involves continuing treatment by (or under supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days; or for prenatal care.

(s) Son or daughter means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is--

(1) Under 18 years of age; or

(2) Eighteen years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLS." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office. A mental or physical disability refers to a "disability," as defined in 29 CFR 1630.2(g).

(t) Spouse means a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in states where it is recognized.

(u) Tour of duty has the meaning given that term in 610.102(h) of this chapter.

630.1203 Leave Entitlement.

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

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(b) An employee shall take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for leave under paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, the 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in that paragraph and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to a total of 12 administrative workweeks of leave under paragraphs (a)(1) and (2) of this section--

(1) May begin prior to or on the actual date of birth or placement for adoption or foster care; and

(2) Shall expire 12 months after the date of birth or placement. Leave for birth or placement must be concluded within 12 months after the date of birth or placement.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) When an employee requests leave under paragraph (a) of this section, the agency must provide guidance concerning an employee's rights and obligations under this subpart.

(h) An agency may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her

intent to invoke entitlement to leave under paragraph (a) of this section. An employee's notice of his or her intent to take leave under 630.1206 of this part may suffice as the employee's confirmation.

630.1204 Intermittent leave or reduced leave schedule.

(a) Leave under 630.1203(a)(1) or (2) of this part shall not be taken intermittently or on a reduced schedule unless the employee and the agency agree to do so.

(b) Leave under 630.1203(a)(3) or (4) of this part may be taken intermittently or on a reduced leave schedule when medically necessary, subject to 630.1207(b)(6) of this part.

(c) If an employee takes leave under 630.1203(a)(3) or (4) of this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in 630.1208(1) of this part.

(d) For the purpose of applying paragraph (c) of this section, an alternative position must be in the same commuting area and must provide--

(1) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate or pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual).

(e) The agency shall determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 200e).

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(f) The number of hours of leave taken intermittently or on a reduced leave schedule shall be subtracted, on an hour-for-hour basis, from the total amount of leave available to the employee under 630.1203(5) and (6) of this part.

630.1205 Substitution of paid leave.

(a) Except as provided in paragraph (b) of this section, leave taken under 630.1203(a) of this part shall be leave without pay.

(b) An employee may elect to substitute the following paid time off for any of the period of leave taken under 630.1203(a) of this part--

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave;

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter;

(4) Compensatory time off; and

(5) Credit hours accrued under a flexible work schedule.

(c) An agency may not deny an employee's right to substitute paid time off under paragraph (b) of this section for any or all of the period of leave taken under 630.1203(a) of this part.

(d) An agency may not require an employee to substitute paid time off under paragraph (2) of this section for any or all of the period of leave taken under 630.1203(a) of this part.

(e) An employee shall notify the agency of his or her intent to substitute paid time off under paragraph (b) of this section for the period of leave to be taken under 630.1203(a) of this part prior to the date such paid time off commences.

630.1206 Notice of leave.

(a) If leave taken under 630.1203(a) of this part is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 days before the date the leave is to begin. If the date of

birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as is practicable.

(b) If leave taken under 630.1203(a)(3) or (4) of this part is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable--e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

(d) If the need for leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under 630.1203(a) of this part until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may not deny an employee's entitlement to leave under 630.1203(a) of this part if the employee fails to follow such agency policies or procedures.

630.1207 Medical certification.

(a) An agency may require that a request for leave under 630.1203(a)(3) or (4) of this part be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the written medical certification to the agency in a timely manner.

(b) The written medical certification shall include--

- (1) The date the serious health condition commenced;
- (2) The probable duration of the serious health condition;

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(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For the purpose of leave taken under 630.1203(a)(3) of this part--

(i) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under 630.1203(a)(4) of this part, a statement that the employee is unable to perform the essential functions of his or her position, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under 630.1203(a)(3) or (4) of this part for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c) The agency shall not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited--e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (2) of this section. The opinion of the third health care provider shall be binding on the agency and the employee.

(f) To remain entitled to family and medical leave under 630.1202(a)(3) or (4) of this part, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(g) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

(h) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may--

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(i) While an employee is on family and medical leave, the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, not more often than every 30 calendar days. An agency may require subsequent medical recertification more frequently than every 30 calendar days if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon continuing validity of the medical certification.

(j) To ensure the security and confidentiality of any written medical certification under 630.1207 or 630.1208(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A of 293 of this chapter.

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630.1208 Protection of employment and benefits.

(a) Any employee who takes leave under 630.1203(a) of this part shall be entitled, upon return to the agency, to be returned to--

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum--

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, merit pay increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

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(c) As a result of taking leave under 630.1203(a) of this part, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee shall not be entitled to--

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under 630.1203(a)(4) of this part, an agency may establish a uniformly applied practice or policy that requires an employee to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency's policy or practice to require written medical certification attesting to an employee's recovery from a serious health condition shall apply only to those employees in positions that have specific medical standard, physical requirements, or who are covered by a medical evaluation program, as provided under 5 CFR part 339. Consistent with 5 CFR 339.301, the written medical certification shall be limited to documentation necessary to prove that the employee meets the specific physical qualifications and/or medical standards for his or her position.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify each employee of this

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requirement before leave commences and pay the expenses for obtaining the written medical certification. An employee's refusal to provide written medical certification under paragraph (h) of this section is grounds for appropriate disciplinary or adverse action, as provided in 5 CFR 339.102(c).

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

630.1209 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under 630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

630.1210 Greater leave entitlements.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

630.1211 Records and reports.

(a) So that the Office of Personnel Management (OPM) can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103(j);

(2) The occupational series for the employee's position;

(3) The number of hours leave taken under 630.1203(a) of this part; and

(4) Whether leave was taken--

(i) Under 630.1203(a)(1), (2), or (3) of this part; or

(ii) Under 630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under 630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under 630.1203(c) of this part; and

(2) The number of hours of leave taken under 630.1203(a) of this part during the employee's 12-month period, as determined under 630.1203(c) of this part.

BASIC ENTITLEMENTS UNDER TITLE 29

This enclosure summarizes the major points of the interim Department of Labor regulations implementing Title I of the Family and Medical Leave Act, applicable to certain categories of Federal employees.

The Family and Medical Leave Act (FMLA) of 1993 was enacted on 5 February 1993.

The new law became effective on 5 February 1993, for most employers.

The U.S. Department of Labor's Employment Standard Administration, Wage and Hour Division administers and enforces FMLA for all private, state and local government employees, and some federal employees.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. An eligible employee's right to FMLA leave begins on 5 August 1993; any leave taken before that date does not count as FMLA leave.

The law contains provisions on employer coverage; employee eligibility for the law's benefits; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; and protections for employees who request or take FMLA leave. The law also requires employers to keep certain records.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local, and federal employers, local education agencies (schools), and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce - including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for a total of at least 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; and
- (4) work at a location where at least 50 employees are employed by the employer within 75 miles.

Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management and the Congress.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth or placement of a child for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

Leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently - which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

If the employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the employer may temporarily transfer the employee to an available alternative position that has equivalent pay and benefits and that can better accommodate recurring periods of leave. The employer may also transfer the employee to a part-time job with equivalent pay and benefits, provided the employee does not work fewer hours than is medically necessary.

- If FMLA leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

- FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. The employer is responsible for designating if an employee's use of paid leave counts as FMLA leave, based on information from the employee. In no case can use of paid leave be credited as FMLA leave after the leave has ended.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility;

- any period of incapacity requiring absence of more than 3 calendar days from work, school, or other regular daily activities that also involves continuing

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treatment by (or under the supervision of) a health care provider; or

- continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days, and for prenatal care.

"Health care provider" means:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or

- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or,

- nurse practitioners and nurse-midwives authorized to practice, and performing within the scope of their practice, as defined under state law; or

- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. (The return to duty provisions of paragraph 7c in the basic instruction shall be followed.)

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefits that the employee earned or was entitled to before using FMLA leave.

UNLAWFUL ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

FMLA is enforced, including investigation of complaints, by the U.S. Labor Department's Employment Standards Administration, Wage and Hour Division. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance. An eligible employee may also bring a private civil action against an employer for violations.

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EMPLOYEE ID		BLK/GRP	ACT UIC	DIST	EMPLOYEE NAME		PLT ROT	PERIOD ENDING	SEQ NC						
216702585		106	000421	SYAOO	JONES ROBERT L			10-16-93							
STD JON		HRS OF WORK													
		SUN	MON	TUE	WED	THR	FRI	SAT	SUN	MON	TUE	WED	THR	FRI	SAT
TOUR															
TYP/SFT															
GRADED NO															
W	D	TYPE	HOURS	JOB ORDER NUMBER				ENV	LST	TMP	NIGHT	START	INIT		
13	LA	8						DA							
14	LA	8						DA							
15	LA	8						DA							
16	LA	8						DA							
REG		OT	COMP	HOL	SUN	2ND	3RD	ND	E/H	LV	NP/LV				

CERTIFICATION: ATTENDANCES AND ABSENCES CERTIFIED CORRECT. OVERTIME APPROVED IN ACCORDANCE WITH EXISTING LAWS AND REGULATIONS FOR NON-EXEMPT FLSA. I DID NOT SUPER OR PERMIT ANY OVERTIME WORK OTHER THAN AS REPORTED FOR THIS PAY PERIOD.

[Signature]
AUTHORIZED SIGNATURE

Example 1
Employee Taking Annual Leave for Birth of Son/Daughter
or Care of Newborn

EMPLOYEE ID		BLK/GRP	ACT UIC	DIST	EMPLOYEE NAME		PLT ROT	PERIOD ENDING	SEQ NO						
217663765		106	000421	SYAOO	JAMES JOHN D			10-16-93							
STD JON		HRS OF WORK													
		SUN	MON	TUE	WED	THR	FRI	SAT	SUN	MON	TUE	WED	THR	FRI	SAT
TOUR															
TYP/SFT															
GRADED NO															
W	D	TYPE	HOURS	JOB ORDER NUMBER				ENV	LST	TMP	NIGHT	START	INIT		
12	KA	8						DB							
13	KA	8						DB							
14	KA	8						DB							
15	KA	8						DB							
16	KA	8						DB							
REG		OT	COMP	HOL	SUN	2ND	3RD	ND	E/H	LV	NP/LV				

CERTIFICATION: ATTENDANCES AND ABSENCES CERTIFIED CORRECT. OVERTIME APPROVED IN ACCORDANCE WITH EXISTING LAWS AND REGULATIONS FOR NON-EXEMPT FLSA. I DID NOT SUPER OR PERMIT ANY OVERTIME WORK OTHER THAN AS REPORTED FOR THIS PAY PERIOD.

[Signature]
AUTHORIZED SIGNATURE

Example 2
Employee Taking Leave Without Pay for Adoption
or Foster Care

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EMPLOYEE ID		BLK/GRP	ACT UIC	DIST	EMPLOYEE NAME		PLT ROT	PERIOD ENDING	SEQ NO						
213456789		106	000421	SYAOO	CATHCART TONY L.			10-16-93							
STD JON		WRS OF WORK													
W		SUN	MON	TUE	WED	THR	FRI	SAT	SUN	MON	TUE	WED	THR	FRI	SAT
TOUR															
TYP/SFT															
GRADED NO															
WEEK	DAY	TYPE	HOURS	JOB ORDER NUMBER			ENV HAZ	LST HR	TMP SFT	NIGHT OFF	START TIME				INIT
1	3	LB	8				DC								
1	4	LB	8				DC								
1	5	LB	8				DC								
1	6	LB	8				DC								
REG		OT	COMP	HOL	SUN	2ND	3RD	ND	E/H	LV	NP/LV				

CERTIFICATION: ATTENDANCES AND ABSENCES CERTIFIED CORRECT. OVERTIME AND ABSENCES MUST BE SUPPORTED BY PROPER DOCUMENTATION. EMPLOYEE MUST NOT SUPPORT OR PERMIT ANY OVERTIME WORK OTHER THAN AS REPORTED FOR THIS PAY PERIOD.

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Example 3

Employee Taking Advanced Annual Leave To Care for Spouse, Son, Daughter, or Parent with a Serious Health Condition

EMPLOYEE ID		BLK/GRP	ACT UIC	DIST	EMPLOYEE NAME		PLT ROT	PERIOD ENDING	SEQ NO						
218990234		106	000421	SYAOO	LEWIS GEORGE R			10-16-93							
STD JON		WRS OF WORK													
W		SUN	MON	TUE	WED	THR	FRI	SAT	SUN	MON	TUE	WED	THR	FRI	SAT
TOUR															
TYP/SFT															
GRADED NO															
WEEK	DAY	TYPE	HOURS	JOB ORDER NUMBER			ENV HAZ	LST HR	TMP SFT	NIGHT OFF	START TIME				INIT
14	LS	8					DD								
15	LS	8					DD								
16	LS	8					DD								
REG		OT	COMP	HOL	SUN	2ND	3RD	ND	E/H	LV	NP/LV				

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Example 4

Employee Taking Sick Leave for Serious Health Condition of Employee